

UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

In Re: Bair Hugger Forced Air) File No. 15-MD-2666
Warming Devices Products) (JNE/FLN)
Liability Litigation)
February 15, 2018
Minneapolis, Minnesota
Courtroom 12W
9:48 a.m.

BEFORE THE HONORABLE JOAN N. ERICKSEN
UNITED STATES DISTRICT COURT JUDGE

THE HONORABLE FRANKLIN L. NOEL
UNITED STATES MAGISTRATE JUDGE

(STATUS CONFERENCE)APPEARANCESFOR THE PLAINTIFFS:

MESHBESHER & SPENCE
Genevieve M. Zimmerman
1616 Park Avenue
Minneapolis, MN 55404

CIRESI CONLIN
Jan Conlin
225 South 6th Street
Suite 4600
Minneapolis, MN

KENNEDY HODGES, LLP
David W. Hodges
711 W. Alabama Street
Houston, TX 77006

1 FOR THE PLAINTIFFS (cont'd):

2 LEVIN PAPANTONIO
3 Ben W. Gordon, Jr.
4 316 S. Baylen Street
Suite 600
Pensacola, FL 32502

5 PRITZKER HAGEMAN, P.A.
6 David J. Szerlag
45 South 7th Street, #2950
7 Minneapolis, MN 55402-1652

8 FOR THE PLAINTIFFS (APPEARING BY PHONE:)

9 PRITZKER HAGEMAN, P.A.
Wendy Thayer
45 South 7th Street, #2950
10 Minneapolis, MN 55402-1652

11 GROSSMAN & MOORE, PLLC
Emily A. DeVuono
12 Jennifer Moore
Elizabeth Coulter
13 Ashton Smith
401 W. Main Street
14 Suite 1810
Louisville, KY 40202

15
16 HARE WYNN NEWELL & NEWTON
Don McKenna
17 Peggy Little
Lynne Reed
18 Massey Building
2025 Third Avenue North
19 Suite 800
Birmingham, AL 35203

20
21 MORGAN & MORGAN, PA
Heather Cullen
22 Joseph T. Waechter
Michael Goetz
23 201 N. Franklin St 7th Floor
24 Tampa, FL 33602
25

1 FOR THE PLAINTIFFS(appearing by phone):

2 RAIZNER SLANIA, LLP

Jeffrey L. Raizner

3 Rica Rinsa

Erin Stracener

4 2402 Dunlavy Street

Houston, TX 77006

5 LONCAR & ASSOCIATES

6 William Hymes

John L. Coveney

7 424 S. Cesar Chavez Blvd

Dallas, TX 75201

8 CAPRETZ & ASSOCIATES

9 Don K. Ledgard

10 5000 Birch St, Suite 2500

Newport Beach, ca 92660

11 DAVIS & CRUMP, PC

Martin D. Crump

12 Robert D. Cain, Jr.

Wes Stevenson

13 2601 Fourteenth Street

Gulfport, MS 39507

14 LEWIS & CAPLAN

15 Amy Webster

Sarah Delahoussaye Call

16 Pete Lewis

3631 Canal Street

17 New Orleans, LA 70119

18 THE RUTH TEAM

Steven C. Ruth

19 Austin Grinder

842 Ramond Avenue

20 Suite 200

Saint Paul, MN 33733-5157

21 LAW OFFICES OF TRAVIS R. WALKER

22 Travis R. Walker

Julie Treacy

23 1235 SE Indian Street

Suite 101

24 Stuart, FL 34997

1 FOR THE PLAINTIFFS(appearing by phone):

2 ANDREWS & THORNTON
3 Anne Andrews
4 John Thornton
5 Lauren Davis
6 2 Corporate Park, Suite 110
7 Irvine, CA 92606

8 LORD & ASSOCIATES
9 Priscilla Lord
10 Melissa Heinlein
11 309 Clifton Avenue
12 Minneapolis, MN 55403

13 MURRAY LAW FIRM
14 Caroline Whitney Thomas
15 650 Poydras Street
16 Suite 2150
17 New Orleans, LA 70130

18 BROWN & CROUPPEN, PC
19 Abby Cordray
20 Seth S. Webb
21 Vanessa Mixco
22 211 North Broadway, Suite 1600
23 St. Louis, MO 63102

24 BEASLEY ALLEN
25 Megan Robinson
Megan Robinson
Renee Lindsey
218 Commerce Street
Montgomery, AL 36104

FITZGERALD LAW GROUP, LLC
Kevin Fitzgerald
120 Exchange Street
Suite 200
Portland, ME 04101

MESHBESHER & SPENCE, LTD
Holly Sternquist
1616 Park Avenue
Minneapolis, MN 55404

NEAL R. ELLIOTT, JR.
P.O. Box 80136
Baton Rouge, LA 70898

1 FOR THE PLAINTIFFS(appearing by phone):

2 PARKER WAICHMAN, LLP
3 Nicole Eisner
4 Michael S. Werner
5 Giselle Grant
6 59 Maiden Lane
7 6th Floor
8 New York, NY 10038

9 BAILEY PEAVY BAILEY COWAN
10 HECKAMAN, PLLC
11 Justin Jenson
12 The Lyric Centre
13 440 Louisiana Street
14 Suite 2100
15 Houston, TX 77002

16 LANGDON & EMISON
17 Rachel Ahmann
18 Lauren Niendick
19 911 Main Street
20 Lexington, MO 64067

21 THE WEBSTER LAW FIRM
22 Chelsie Garza
23 6200 Savoy Suite 150
24 Houston, TX 77036

25 LAW OFFICES OF JAMES S. ROGERS
Heather Cover
1500 4th Avenue #500
Seattle, WA 98101

THE OLINDE FIRM, LLC
Alfred Olinde, Jr.
400 Poydras Street
Suite 1980
New Orleans, LA 70130

SANDERS PHILLIPS GROSSMAN
Randi Kassan
Michael Nathan
100 Garden City Plaza
Suite 500
Garden City, NY 11530

1 FOR THE PLAINTIFFS(appearing by phone):

2 BERNSTEIN LIEBHARD LLP

3 Dae Lee

4 Daniel C. Burke

5 Jessica Keller

6 10 East 40th Street

7 New York, NY 10016

8 HOUSSIÈRE DURANT & HOUSSIÈRE

9 Randall A. Kauffman

10 Monica Vaughan

11 Shirley Strom-Blanchard

12 1990 Post Oak Blvd Suite 800

13 Houston, TX 77056

14 GOZA & HONNOLD, LLC

15 Lisa Joyce

16 Kirk Goza

17 Bradley Honnold

18 11181 Overbrook Road, Suite 200

19 Leawood, KS 66211

20 COLLING GILBERT WRIGHT &

21 CARTER, LLC

22 Lia Ann Thomas

23 Melvin Wright

24 The Florida Firm

25 801 N. Orange Avenue

Suite 830

Orlando, FL 32801

SKIKOS CRAWFORD SKIKOS&

JOSEPH, LLP

Matt Skikos

Julie Tucci

Darilyn Simon

One Sansome Street, Suite 2830

San Francisco, CA 94104

TATE LAW GROUP, LLC

Nikki Jackson

2 East Bryan Street

Suite 600

Savannah, GA 31328

THE MILLER FIRM, LLC

Tayjes Shah

108 Railroad Avenue

Orange, VA 22960

1 FOR THE PLAINTIFFS (appearing by phone):

2 MARTIN HARDING & MAZZOTI, LLP
3 Rosemarie Bogdan
4 1222 Troy-Schenectady Road
5 P.O. Box 15141
6 Albany, NY 12212-5141

7 RICHARDSON PATRICK WESTBROOK &
8 BRICKMAN, LLC
9 Daniel Haltiwanger
10 Missi Cruz
11 P.O. Box 1368
12 Barnwell, SC 29812

13 RIEDERS TRAVIS HUMPHREY WATERS
14 & DOHRMANN
15 Deborah Bueno
16 Melissa Barnum
17 Clifford A. Rieders
18 161 West Third Street
19 Williamsport, PA 17701

20 PETERSON & ASSOCIATES, P.C.
21 Brian Emerson Tadtman
22 801 W. 47th Street, Suite 107
23 Kansas City, MO 64112

24 ALBERT BROOKS FRIEDMAN LTD
25 Albert B. Friedman
Kelly Lopez
161 N. Clark Street
Suite 2575
Chicago, IL 60601

19 PARKER WAICHMAN, LLP
20 Nicole Eisner
21 Michael S. Werner
22 Giselle Grant
23 59 Maiden Lane
24 6th Floor
25 New York, NY 10038

RANDALL J. TROST, P.C.
Carrie Hancock
Pam Rodriguez
Randall T. Trost
801 Main Street
Lynchburg, VA 24504

1 FOR THE PLAINTIFFS (appearing by phone):

2 SCHNEIDER SCHNEIDER & SCHNEIDER
3 Scott Haider
4 815 Third Avenue South
5 Fargo, ND 58103

6 BERNHEIM DOLINSKY KELLEY, LLC
7 Walter Kelley
8 Paula Bliss
9 4 Court Street
10 Plymouth, MA 02360

11 JUSTINIAN & ASSOCIATES PLLC
12 Amber Pang Parra
13 6228 Bandera Road
14 San Antonio, TX 78238

15 MEYERKORD & MEYERKORD LLC
16 Joseph Klenofsky
17 1717 Park Avenue
18 St. Louis, MO 63104

19 NEWMAN BRONSON & WALLIS
20 Lauren Bronson
21 2300 West Port Plaza Drive
22 Saint Louis, MO 63146

23 SHELTON LAW GROUP
24 Rob Shelton
25 9300 Shelbyville Road
Suite 215
Louisville, KY 40222

SHOWARD LAW FIRM PC
Elizabeth Whitley
Sarah J. Showard
4703 E Camp Lowell Drive
Suite 253
Tucson, AZ 85712

CHAPPELL SMITH & ARDEN PA
Mark D. Chappell Jr
Graham Newman
Bonnie Sluce
15150 Calhoun Street
Columbia, SC 29201

1 FOR THE DEFENDANTS 3M:

2 BLACKWELL BURKE P.A.
3 Ben Hulse
4 Mary Young
5 431 South Seventh Street
6 Suite 2500
7 Minneapolis, MN 55415

8 FAEGRE BAKER DANIELS
9 Bridget M. Ahmann
10 90 South Seventh Street
11 Suite 2200
12 Minneapolis, MN 55402

13 Court Reporter: MARIA V. WEINBECK, RMR-FCRR
14 1005 U.S. Courthouse
15 300 South Fourth Street
16 Minneapolis, Minnesota 55415

17 Proceedings recorded by mechanical stenography;
18 transcript produced by computer.
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P R O C E E D I N G S

(9:48 a.m.)

THE COURT: Good morning. Please be seated. I know we've kept you waiting a little bit, but we were talking about your case, so I don't know if that's good news or bad news. But welcome anyway and also welcome to the people who are on the phone.

And as we have done before, I'll unmute you for a moment and would somebody on the phone please say something just so I know that you can -- I guess so I know you're there. Somebody took a breath there.

MR. FRIEDMAN: My name is Albert Friedman from Chicago. I'm here.

THE COURT: Okay. Good enough. Thanks. I'll mute you. And we will continue. Let's have appearances of counsel who are present.

MS. ZIMMERMAN: Good morning, Your Honors.
Genevieve Zimmerman for plaintiffs.

MS. CONLIN: Good morning, Your Honors. Jan
Conlin on behalf of plaintiffs.

MR. GORDON: Good morning. Ben Gordon for
plaintiffs.

MR. HODGES: David Hodges for plaintiffs.

MR. SZERLAG: David Szerlag --

THE COURT: Okay, good morning. Who are you

1 again? Next to Mr. Hodges, who is that next to you?

2 (Laughter.)

3 MR. GORDON: I'm glad to be back, Your Honor.

4 THE COURT: We had an e-mail -- before you
5 introduce yourself again, we had a chambers e-mail from
6 Mr. Blackwell saying that he is still in trial, I think.
7 Anyway that's what he said, and he said something like he
8 has not forsaken the Court.

9 MR. HULSE: They had closings yesterday, submitted
10 to the jury last night, but I can't speak to whether the
11 closing went a little extra long, spent a little more time
12 in L.A., but we do expect him back next week. Ben Hulse for
13 defendants.

14 MS. YOUNG: Good morning, Your Honors. Mary Young
15 for defendants.

16 MS. AHMANN: Bridget Ahmann for defendants.

17 THE COURT: Welcome to all of you. I issued -- I
18 signed some orders yesterday. I don't know, actually I'm
19 not a hundred percent certain whether they've been filed or
20 not.

21 MR. HULSE: We saw the Houseman Order this
22 morning, the subject matter jurisdiction, but I don't think
23 any others.

24 THE COURT: Okay. What about Gruetzmacher,
25 Garcia, et al?

1 MR. HULSE: The PFS issues, we haven't seen them
2 yet.

3 THE COURT: Right, just a second. Were they
4 filed? I signed them but they weren't filed?

5 THE CLERK: No.

6 THE COURT: Aha, that just proves that you didn't
7 sneak into my office and see what I signed.

8 All right. Well, let's turn our attention then to
9 the joint agenda. The first matter on the agenda is the
10 Gareis bellwether scheduled, and we have a pretrial
11 conference scheduled for the first Friday of May. It says
12 here depositions are to be completed by two days ago. And
13 there's an agreement to take depositions on today and
14 tomorrow. And case specific dispositives then will be filed
15 the 20th. What's that, next Monday or?

16 MR. HULSE: Tuesday.

17 THE COURT: Tuesday, okay. And then trial begins
18 on May 14th. Okay, so should you not all be in deposition
19 then? Isn't today the 15th?

20 MS. ZIMMERMAN: Yes, Your Honor, and actually with
21 the Court's indulgence, to the extent that we might touch on
22 some of the expert updates, which I think is the last item
23 on the agenda, I might see if the Court would allow us to do
24 that first. I'm actually helping with the deposition that
25 has started, and I would like to sneak out, with the Court's

1 indulgence.

2 THE COURT: All right. That's very doable.

3 Ms. Zimmerman, why don't I hear from you first
4 about any issues that remain. I'm hoping that some of this
5 back and forth has been worked out since the joint agenda
6 was submitted. It seemed like the kind of thing that might
7 be susceptible to being worked out, but I'd like to hear
8 from you first.

9 MS. ZIMMERMAN: Absolutely, Your Honor.

10 With respect to the payments issue for the expert
11 witnesses, I believe that that issued has been resolved. We
12 have received payment for the outstanding expert witness
13 invoices by hand delivery yesterday afternoon, and we expect
14 that that is no longer an issue that requires the Court's
15 attention.

16 So that's the first thing on the case specific
17 expert deposition update on page five. And I think actually
18 that deals with the first two paragraphs. And then really
19 the last issue that I was here to address is to the extent
20 that defendants have placed on the agenda an update with
21 respect to what they call an untimely production from
22 Dr. Elgobashi related to his CFD. I have copies of the
23 subpoenas if the Court would like to see them.

24 Defendants issued a subpoena to Dr. Elgobashi
25 requesting various documents that were to be produced by

1 February 10th at noon. We did offer them actually on a
2 flash drive a day early. Defense counsel declined to accept
3 that, but they were produced in a timely manner pursuant to
4 the subpoena at noon on Saturday at his deposition. And,
5 again, those, none of the documents that have been produced
6 change any of the opinions that Dr. Elgobashi has offered in
7 a timely way in connection with his opinion in Gareis, which
8 was produced November 27th of 2017.

9 Rather, what the files do, they have, they are
10 recently completed CFD that essentially shows the math
11 supporting the opinions, and it shows with precision. So in
12 his expert report provided in November, he said that the
13 same impact would happen with the 505. He gave a time range
14 of I believe 20 to 60 seconds for the 505 device, and what
15 the device or what the files we produced last week showed,
16 the new CFD showed with precision that it is inside that
17 range of I believe its 43 seconds.

18 So to the extent that the defendants have anything
19 to say with respect to Dr. Elgobashi's production,
20 plaintiffs have also said -- would inform the Court that we
21 have also prepared subpoenas to each of the defense
22 witnesses in this case, and we have received either no
23 productions, late productions or insufficient productions
24 along the way, and we're not going to raise motions to
25 exclude these experts based on those productions.

1 But we will say that, for example, we received an
2 external hard drive from Dr. Abraham, who is presently being
3 deposed, but we received the hard drive for him just this
4 past Friday, despite the fact that that subpoena production
5 was due on the 22nd of January so.

6 THE COURT: But you're not making a motion about
7 that.

8 MS. ZIMMERMAN: We are not.

9 THE COURT: Okay. Mr. Hulse, first of all, or
10 Ms. Young? The payment matter is all worked out, is it?

11 MS. YOUNG: It is, Your Honor, and we certainly
12 strenuously object to the accusations that were made that
13 Blackwell Burke has mishandled funds or acted
14 unprofessionally and --

15 THE COURT: I'm sure you haven't mishandled the
16 funds, and I'm sure you haven't done anything wrong, and I
17 didn't gather that you were being even accused of that. So
18 I just for the moment want to make sure that there's nothing
19 for us to decide or do on that.

20 MS. YOUNG: There is not.

21 THE COURT: Okay. And then if we're talking about
22 the deposition matters, then I'm going to --

23 MS. YOUNG: With respect to Doctor -- oh, excuse
24 me, Your Honor.

25 MAGISTRATE JUDGE NOEL: Go ahead.

1 THE COURT: I was going to handle the Keen --

2 MAGISTRATE JUDGE NOEL: I'm in charge, but it's
3 your turn to talk.

4 THE COURT: Since it's Elgobashi, then Judge Noel
5 is going to take the lead on this one.

6 MAGISTRATE JUDGE NOEL: Go ahead.

7 MS. YOUNG: With respect to the Elgobashi CFD,
8 it's defendant's position that that additional CFD on the
9 model 505 was due at the end of November. We previewed this
10 issue with the Court last time. We understand that there is
11 no motion before the Court and decided not to tee that up
12 today. To the extent we have a motion to exclude either
13 because of the timeliness of that production or the
14 substance of the late CFD, we intend to bring that by motion
15 and just simply reserved our rights today and wanted the
16 deposition of Dr. Abraham to proceed, and the defendants
17 will make a decision as to whether the Court intervention is
18 required on that issue.

19 MAGISTRATE JUDGE NOEL: So neither side is asking
20 the Court to do anything today with regard to either of
21 those depositions?

22 MS. YOUNG: Correct.

23 MAGISTRATE JUDGE NOEL: And are these folks going
24 to be called live at the Gareis trial or are these
25 depositions, if they go forward, would be the testimony that

1 would be offered?

2 MS. YOUNG: So when you're talking about these
3 depositions, we have Dr. Abraham today. Dr. Elgobashi's
4 deposition was last Saturday in Los Angeles, and so that is
5 concluded then. They haven't yet decided whether we have a
6 motion to reopen that deposition based on the disclosure,
7 but those experts I believe are intended to be called live
8 at trial.

9 MAGISTRATE JUDGE NOEL: So they're not being
10 videotaped as we speak or they were videotaped or will be
11 today or?

12 MS. YOUNG: I actually wasn't --

13 MS. ZIMMERMAN: Both, Your Honor. They were
14 videotaped last Saturday. Dr. Abraham is being videotaped
15 presently. Dr. Elgobashi will be here live to provide
16 testimony at trial in May, and I think they can speak to
17 Dr. Abraham.

18 MAGISTRATE JUDGE NOEL: Okay. Thank you. I took
19 the lead, and it appears we don't have to do anything.

20 THE COURT: Good job.

21 MS. YOUNG: So, Your Honors, there is nothing
22 before the Court on these issues. Thank you.

23 THE COURT: All right. Ms. Zimmerman, does that
24 conclude --

25 MS. ZIMMERMAN: With the Court's indulgence, I

1 would exclude myself.

2 THE COURT: Thank you. Nice to see you.

3 All right. Repopulating the bellwether pool.

4 You're working on that?

5 MS. CONLIN: Correct.

6 THE COURT: Do you anticipate any problems or is

7 there anything productive that we can discuss today,

8 Ms. Conlin?

9 MS. CONLIN: No, Your Honor.

10 THE COURT: I can't hear you.

11 MS. CONLIN: We've provided proof of use on the
12 one hundred bellwether selections, and we're just waiting
13 for any objections by 3M, which I think are due early next
14 week.

15 MAGISTRATE JUDGE NOEL: And are there any issues
16 left with regard to the *Lexecon* waiver thing that defendants
17 wanted early and you were opposing that, and I picked some
18 date and said this is the date by which --

19 MS. CONLIN: Yeah, and we've sent out a
20 communication to all the lawyers that have cases in that one
21 hundred pool and told them that this is the date. We expect
22 people to comply with it.

23 MAGISTRATE JUDGE NOEL: And do you anticipate as I
24 recall from last time around there was some one percent or
25 two percent of the folks didn't want to waive. Do we know,

1 do we have a sense of?

2 MS. CONLIN: We have had no communications with
3 any of the individual lawyers other than sending them a
4 letter saying here's the Court's Order and here's the date.
5 I'm not in a position to tell you where people are at.
6 We've not had any individual conversations with those folks.

7 MAGISTRATE JUDGE NOEL: Okay. Thank you.

8 THE COURT: And defense, you, I imagine, have
9 nothing to say on this?

10 MS. AHMANN: No.

11 MR. HULSE: And no, Your Honors.

12 THE COURT: Okay. So the PFS issue.

13 MS. CONLIN: Say, Your Honor? Mr. Szerlag, just
14 so that in complete candor, he did tell me that we have
15 received a couple e-mails from lawyers representing
16 plaintiffs at this point in time who have indicated that
17 they're not going to waive.

18 The intent of my comments was to say we haven't
19 had affirmative conversations with anyone other than sending
20 out. We have gotten a couple e-mails in from people saying
21 that they're not waiving. I don't even know who those folks
22 are, but I want to make sure that the Court is aware of
23 that.

24 MAGISTRATE JUDGE NOEL: But that hasn't been
25 communicated to defendants yet?

1 MS. CONLIN: No, I think the date for that is
2 early next week. And we thought we would do it all as one
3 submission, Your Honor.

4 THE COURT: Mr. Szerlag, any sense of how many of
5 those e-mails you've gotten or e-mails concerning how many
6 cases?

7 MR. SZERLAG: There have not been that many. I
8 would think at this point I received about ten. Some people
9 had questions about the waiver. Some people said that they
10 would waive, that they would get written waivers from their
11 clients. My recollection is there were two or three people
12 at this point that indicated that they probably would not
13 waive *Lexecon*.

14 THE COURT: Okay. All right. Thank you very
15 much. I appreciate it.

16 And, Mr. Szerlag, as long as you're up, should we
17 just take a parenthetical time-out so that you can give your
18 update?

19 MR. SZERLAG: Okay. Thank you, Your Honor. The
20 number of cases now pending as of last night 4,520 cases in
21 the MDL. The number in the State Court obviously has not
22 changed. And as the Court is aware, those cases are under
23 an order from Judge Leary. My understanding is that there
24 will be an appeal of Judge Leary's decision on the State
25 Court cases in Ramsey County. I don't have any update other

1 than what is in the status report as far as the other State
2 Court cases that are pending there.

3 THE COURT: What's the -- you might not know this,
4 and I can't remember what the timing deadline is for State
5 Court appeals, but if the motion for reconsideration was
6 denied on the 31st of January, I don't know, has the notice
7 of it been --

8 MR. SZERLAG: Well, I don't even think there's a
9 formal motion, but my understanding is it's 60 days from the
10 order entered, and the order was entered I believe on the
11 26th of January.

12 THE COURT: Right, right. Judgment was entered on
13 the 26th. Okay. Thank you, Mr. Szerlag. I appreciate it.

14 MS. CONLIN: I have a note here that --

15 THE COURT: Just hold on, one at a time.
16 Mr. Szerlag, are you done with everything else?

17 MR. SZERLAG: The only other thing I have to
18 address perhaps is the PFS issue, but we can wait on that,
19 if you'd like. I know Mr. Hulse is probably --

20 THE COURT: Ms. Conlin?

21 MS. CONLIN: I just wanted to confirm that it's my
22 understanding that the notice of appeal needs to be filed by
23 March 26th.

24 THE COURT: Okay. All right. Mr. Szerlag, on the
25 PFS issue, did you want to be heard?

1 MR. SZERLAG: Well, I think Mr. Hulse would be
2 heard first, and then I will -- I may or may not have some
3 comments depending on what he has to say.

4 MR. HULSE: If the motion has been resolved, I'm
5 not sure whether I have anything to add.

6 THE COURT: Would you give us a moment? Hold on.

7 (Off the record discussion.)

8 (IN OPEN COURT)

9 THE COURT: All right. Let me -- let's do it this
10 way. Why don't I tell you what I am tentatively planning on
11 ordering, but the order doesn't have any effect because it
12 has not been filed as of this moment. So I'm just going to
13 give you a preview so that it might save some of your
14 breath, but I'm not stating this as information with respect
15 to something that's already been ordered.

16 MR. HULSE: Understood. Thank you, Your Honor.

17 THE COURT: So the Gruetzmacher, Garcia, Husman,
18 Pickens group, I guess I'll name all of them. Sparks,
19 Peters, Jadwin, Osborne, Nunn, Taylor, Blancett 17CV2383,
20 Pickett, Suchan, Rashad, McCall, Ghidella, Gawthorp,
21 McLaughlin, Mazer, Miller, Loving, Gilliam, Rietz, Reeves,
22 O'Connell and Butler is granted. Those are -- that includes
23 16 plaintiffs who have not responded, and seven plaintiffs
24 who stopped communicating with counsel and have not disputed
25 the merits of the motion.

1 Those seven -- that would be Blancett, Mazer,
2 McLaughlin, Miller, Osborne, Pickett, and Rashad.

3 MR. HULSE: Your Honor, I actually fell behind a
4 little bit. May I ask were Butler, Taylor and Suchan on
5 that list?

6 THE COURT: Nope, they're going to be on another
7 list.

8 MR. HULSE: Okay, I wanted to make sure that the
9 Court was aware of the suggestions of death, which put them
10 into the PTO23 process.

11 THE COURT: That's a different deal.

12 MR. HULSE: All right.

13 THE COURT: Okay, so that's those. Those are
14 dismissed with prejudice and that is for failing to comply
15 with PTO14 and failing to prosecute.

16 So now to the three death cases, that's Butler,
17 Suchan and Taylor. Those cases were filed after death in
18 Federal Court, and the Court lacks subject matter
19 jurisdiction in those cases, and so those I am planning to
20 dismiss with prejudice.

21 MR. HULSE: You know and, Your Honor, we may have
22 simply missed the date of death, and our thought was that
23 they were filed after death but that because a suggestion of
24 death was filed, it went into PTO23. But to be honest here
25 today, I can't say that I checked to see whether they were

1 filed before or after the plaintiff died.

2 THE COURT: Here's what I've got with respect to
3 Butler, that the Complaint was filed in September of 2017,
4 and the death occurred in February of 2016.

5 MR. HULSE: Okay. Well, that's --

6 THE COURT: So that would be dismissed. With
7 respect to Suchan, I've got that the Complaint was filed in
8 July of 2017, and the death occurred in August of 2016. So
9 the Court has no jurisdiction there.

10 And then with respect to Taylor, the Complaint was
11 filed in June of 2017, and the death occurred in April of
12 2017. So about three months before the Complaint was filed.

13 MR. HULSE: That seems clear cut. And as the
14 Court knows, we often are not aware that the plaintiff has
15 died or the date of the death until there's a response to
16 one of these PFS motions.

17 THE COURT: Right, right. So that's that.

18 MR. HULSE: Agreed.

19 THE COURT: Does anyone have anything to say about
20 that? I may have missed somebody, but I just double
21 checked, and I don't think so. So all in all, we've talked
22 about --

23 MR. HULSE: And, Your Honor, there were five cases
24 that were dismissed by stipulation of dismissal.

25 THE COURT: Okay. Just a second, I just counted.

1 I've got 26 there. But I think that those stipulations, I
2 think those are all included in this list somewhere, aren't
3 they?

4 MR. HULSE: That's where I have to confess that I
5 fell a little bit behind the Court when you were listing off
6 the cases.

7 THE COURT: Well, that's my fault because -- just
8 because everything is my fault. Okay, so --

9 MR. HULSE: So I can name --

10 THE COURT: Just a second, are the five that
11 you're talking about, are they Gawthorp, Ghidella, Loving,
12 Nunn and Reeves?

13 MR. HULSE: Those are the cases, yes.

14 THE COURT: Okay, I think I have those in here but
15 let's just double check. Gawthorp, that's 3187. Yes.

16 MR. HULSE: Yes.

17 THE COURT: Ghidella, I'm pretty sure I remember
18 reading that because I didn't know how to pronounce it,
19 3103, yes.

20 Loving, I remember reading that because of obvious
21 reasons. 3895, yes.

22 Nunn, 2231, yes.

23 And, finally, Reeves, I think I remember that one
24 also. Yes, 3956, yes. So they're all included.

25 MR. HULSE: Great. Thank you, Your Honor.

1 MR. HODGES: Your Honor, may I be heard on one of
2 them? One of the cases?

3 THE COURT: All right.

4 MR. HODGES: David Hodges appearing on behalf of
5 Robert McLaughlin. Your Honor, this one I think is a little
6 bit different from the others that were on the dismissal
7 docket today in that we've heard from Mr. McLaughlin, and he
8 has confirmed that he's been having ongoing medical issues
9 which was preventing him from communicating with us. We've
10 asked for an additional 60 days in order to get a good PFS
11 on file for him, and I've asked the Court's indulgence to
12 grant us that in light of the fact that he's been sick.

13 THE COURT: And you filed that?

14 MR. HODGES: Yes, Your Honor. Are you talking
15 about the response to the motion to dismiss?

16 THE COURT: Yes.

17 MR. HODGES: Yes, Your Honor, and it's supported
18 by the declaration of Donald Green, one of my associates,
19 about the medical issues.

20 THE COURT: Was there any -- so that's -- has
21 McLaughlin made any attempt to contact counsel since the
22 December report of the ongoing medical issues? I'm looking
23 for some substantial --

24 MR. HODGES: We did speak to him on December 20th
25 of 2017 and during that phone call is when he informed us

1 that he had been sick and unable to comply with our request.

2 THE COURT: Okay, so, but that's a while ago.

3 MR. HODGES: Well, less than two months ago.

4 THE COURT: And did he give you any medical
5 records or did he give you anything to substantiate the
6 reasons for his --

7 MR. HODGES: No, Your Honor.

8 THE COURT: All right. The Defendant's motion is
9 granted with respect to McLaughlin.

10 MR. HODGES: Thank you, Your Honor.

11 THE COURT: Okay. Item Number 6 -- I'm sorry,
12 Item Number 7. The Augustine discovery, the joint agenda
13 says that on January 31st, the Court granted Defendant's
14 motion to compel. On February 8th, the Court set
15 February 14th, which is yesterday the deadline for
16 compliance, with the January 30th order.

17 It says defendants anticipate that the continued
18 deposition of Dr. Augustine, the depositions of Randall
19 Benham and Brent Augustine will be conducted in March.
20 Plaintiffs note their desire and intention to participate in
21 the questioning of each of these witnesses. Anything more
22 to be said?

23 MS. CONLIN: Just briefly, Your Honor. The only
24 reason we flagged that in the status report is that at the
25 last deposition of Dr. Augustine, the entire seven hours was

1 taken by defendants, so I had an opportunity for maybe two
2 minutes at the end of the deposition. But we've actually
3 not had a chance to depose him. We've got some questions we
4 want to ask of these individuals, and I just don't, I'm
5 flagging for the Court in the event that they run the seven
6 hours, and we haven't had an opportunity to ask the
7 questions that we've been wanting to ask.

8 MAGISTRATE JUDGE NOEL: How long do you anticipate
9 needing to get your questions done?

10 MS. CONLIN: I would say probably three to four
11 hours. Now it's possible that some of it is covered during
12 the defense questioning of Dr. Augustine, but I just want to
13 flag for the Court that we haven't had an opportunity to
14 depose any of these folks under oath yet.

15 MAGISTRATE JUDGE NOEL: What, if anything, have
16 the witnesses themselves said about the timing? Have they
17 said, hey, seven hours are up, we're out of here.

18 MS. CONLIN: If I recall, Your Honor, I think last
19 time Dr. Augustine got to the seven hours and said that, you
20 know, he was represented by counsel, and they said your
21 seven hours is up. And I requested indulgence because there
22 were a couple of questions that I thought were important
23 that they get answered including the fact that he's not
24 involved in this case, and so they let me do that for a
25 couple of minutes. But I do have questions for

1 Dr. Augustine, and I want to make sure I get a chance to ask
2 them.

3 MAGISTRATE JUDGE NOEL: Mr. Hulse?

4 MR. HULSE: Well, this is a real problem for us,
5 Your Honor. This deposition is going to be taken pursuant
6 to the Court's Order granting us the additional time that we
7 demonstrated that we needed to finish what we needed to do.
8 Five hours I believe is what we recorded, so if we're
9 looking at three or four hours from the plaintiffs, that's
10 wiping out most of it.

11 We would have appreciated if they would have
12 joined us in that motion for additional time to depose him
13 and then maybe we could have gone and gotten more time seven
14 or eight hours, but right now the time that has been granted
15 has been time for us to complete our examination of
16 Dr. Augustine.

17 So clearly there's no motion before the Court
18 today. We'll certainly talk with plaintiffs' counsel and
19 see if we can resolve this, but if that's the kind of time
20 they need, then we may need to revisit this issue with the
21 court.

22 MAGISTRATE JUDGE NOEL: Again, my thought would be
23 that both counsel should chat with each other and loop in
24 Mr. Benham because, obviously, he has a dog in the fight
25 too.

1 MR. HULSE: Indeed, he does. Indeed he does.
2 We'll confer with counsel. And we did get Mr. Benham's
3 production yesterday. We're looking through it. I can't
4 say it's the end of the story at this point. Maybe it is,
5 maybe it isn't, but we do intend to proceed with noticing of
6 the depositions. Thank you.

7 MAGISTRATE JUDGE NOEL: Thank you. Anything else,
8 Ms. Conlin? There is no motion right here before us,
9 correct?

10 MS. CONLIN: There isn't, but I don't have the
11 motion papers in front of me, the briefing on this, but I do
12 believe previously we've indicated to Your Honor that we
13 want some time to depose him as well.

14 MAGISTRATE JUDGE NOEL: So just be sure to talk to
15 Mr. Hulse and Mr. Benham to see if you can't work it out.
16 And if not, let us know. We can schedule a hearing as
17 needed if we need to.

18 MS. CONLIN: Thank you, Your Honor.

19 THE COURT: Are there any matters that I have
20 missed that were on the joint agenda?

21 And failing that, are there any matters other than
22 what's contained in the joint agenda that would be
23 productive to discuss today?

24 MS. CONLIN: Not on behalf of the plaintiffs, Your
25 Honor.

1 MS. YOUNG: Nothing on behalf of defendants.

2 THE COURT: All right. The March 15th status
3 conference will be conducted by Judge Noel.

4 MAGISTRATE JUDGE NOEL: With your permission, I
5 would just keep it here so as not to inconvenience
6 everybody, and whatever the phone call people are would
7 still be the same.

8 THE COURT: Right. I was assuming that would be
9 but thanks for making that clear. The reason I am unable to
10 participate in this management conference is that I will be
11 in Washington D.C. at a conference about managing MDLs. So
12 there.

13 And then I am personally not available on April
14 19th. Judge Noel is available then. That is right on the
15 eve, close to being right on the eve of the Gareis trial.
16 And so on March 15th, maybe you can think about whether you
17 need that April 19th status conference. We'll leave it on.
18 It might be even more important to have it then, but bear in
19 mind that I am unable to be here on April 19th.

20
21 MR. HULSE: And, Your Honor, we do have April 13th
22 set aside for the case specific Daubert and summary
23 judgment, so maybe we could all do a status as part of that
24 day too.

25 THE COURT: You have that set aside for a hearing?

1 MR. HULSE: Yes, Your Honor.

2 THE COURT: It says, "loading, please wait."

3 Friday. Friday the 13th. Are you sure you want to do that?

4 MS. CONLIN: We're unaware of the April 13th
5 hearing date. I was just wondering if the Court can
6 inquire.

7 MR. HULSE: Ms. Zimmerman and I talked to Cathy at
8 the last status and set it then. It was after discussion
9 with your colleagues on their availability.

10 THE COURT: Okay. Mr. Szerlag?

11 MR. SZERLAG: Yes, I just have one question about
12 the, and I apologize I didn't bring it up earlier about the
13 *Lexecon* waivers. We have had some inquiry from the --

14 MAGISTRATE JUDGE NOEL: Let me interrupt for a
15 second. You need to use the microphones on the podium so
16 the folks on the phone who might have an interest in this,
17 if they're some of the folks you're talking about.

18 MR. SZERLAG: Okay, thank you. We've had some
19 inquiry from the attorneys on the repopulation and on the
20 *Lexecon* waivers and where or if they should be filed in the
21 Court file itself. And for sake of clarity or if you have a
22 preference that they'd be filed or a formal waiver be filed
23 in the individual file or can we do one filing? We hope to
24 have everyone's answer by the due date, which I believe is
25 next week, and we can do it that way as well. Whatever the

1 Court prefers.

2 THE COURT: One filing is fine.

3 MR. SZERLAG: One filing? Great. Thank you.

4 THE COURT: Yeah. Good question.

5 Anything from anyone on the phone? I have you
6 unmuted now.

7 Anything from anybody on the phone? I have you
8 unmuted.

9 (No response.)

10 THE COURT: Hearing nothing, we will be in recess.

11 (Court adjourned at 10:27 a.m.)

12

13 * * *

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15 I, Maria V. Weinbeck, certify that the foregoing is
16 a correct transcript from the record of proceedings in the
17 above-entitled matter.

18 Certified by: s/ Maria V. Weinbeck

19 Maria V. Weinbeck, RMR-FCRR

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